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A CASE AGAINST DISCRIMINATING DUTIES

A discussion of discriminating duties as an aid to shipping cannot well start without reference to W. W. Bates. In the words of the French king, Bates might have said, "I am discriminating duties." His origin is somewhat obscure. It is known that as a shipping commissioner in Chicago, his acquaintances determined to have him shifted. By a twist of fate a Commissioner of Navigation was needed in Washington. Bates was discreetly placed in the position, and began immediately to take himself seriously. It remains a problem for the Freudians to explain the influences which made him an avowed hater of the British and a devout believer in the healing efficacy of discriminating duties. That he became a believer in the latter through processes of ratiocination is unthinkable, since it is known that in indexing a book he listed a number of words under "the."

At any rate he talked discriminating duties early, late, and vehemently, with a little lion-baiting thrown in to please the rabble. Through the vigor of his personality—and no one will deny that he had vigor—he invented and animated the theory that discriminating duties developed our merchant marine in the early days of the Republic. It has been proved that because certain tonnage figures were lacking for the years between 1789 and 1821, he plotted those obtainable and read those lacking from the line connecting the known points on his chart. With these manufactured figures to back up his theory, he proceeded to talk about it so constantly that others began to believe him. As his vehemence increased, his critical faculties disintegrated, until finally as the Commissioner of Navigation, he wrote an annual report so biased that the Secretary of the Treasury suppressed it. It is impossible today to find in any library a complete set of these annual reports. That for one year, 1891, is missing, and this report reposes today under lock and key in the Bureau of Navigation in Washington.

The indomitable energy of Bates in spreading the doctrine of discriminating duties bore results. The Merchant Marine Commission in 1904 was about to recommend this method of aiding our shipping, when the secretary of the Commission notified the Com-

missioner of Navigation, Eugene T. Chamberlain, who had not been able to follow the situation carefully because of sickness. Mr. Chamberlain in a few days prepared a magnificent exposé of the discriminating duties argument and killed the matter so effectively that the Commission reported against this scheme. It is regrettable that this aristocratic analysis is buried in that potters' field: *Hearings, Mer. Mar. Com. Sen. Rept.* 2755, 58th Cong., 3d Sess., pp. 1757-1807.

The argument for discriminating duties is, in brief, that the early growth of our shipping from 1789 to 1818 was due to the policy of discrimination by which a preference was given to goods carried in American vessels. By analogy it was argued in 1904 that a return to this practice would again cause an expansion of our merchant marine. By analogy a leading marine journal today argues that the enforcement of Section 34 of the Merchant Marine Act will enable us to keep the ships the war gave us.

As a matter of fact, this line of reasoning is uncritical rot. It is an edifying example of the genus *homo sapiens* blindly following a man who had to invent figures to back up his theory. Our statesmen in the early days did not place discriminating duties primarily as an aid to shipping but as a means of forcing the adoption of freedom of commercial intercourse. The statistics used to prove the beneficial results of discriminating duties are fallacious. The incomprehensible European wars of the period literally threw business into American hands. To argue that discriminating duties in such a period were the causes of the expansion of our shipping is as logical as the statement that the LaFollette Seaman's Bill made our shipping increase during the late war. Not only is it impossible to prove that our shipping increased between 1789 and 1818 because of our policy of discrimination, but it can be proved that a considerable increase took place immediately after the abandonment of this policy. And, finally, any student of the history of shipping knows that the common carrier of the ocean, so far as the United States is concerned, did not appear until after the period of discrimination. In other words, shipping as we know it today did not exist prior to 1816.

Discrimination in the early days of the United States was not an offensive policy of protection but a defensive one. The purpose of the United States in imposing discriminating duties was to retaliate against foreign nations which imposed discriminating duties on our vessels. This purpose is clearly indicated by debates in Congress, by reports of the Secretary of State, by statements of our envoys to

Great Britain authorized to secure reciprocity, by the report of a House committee on the subject of our commercial relations, and more particularly and fully by the message of President John Quincy Adams in 1828.

Thomas Jefferson, Secretary of State, in his report to President Washington in 1791 said:

Were the ocean, which is the common property of all, open to the industry of all, so that every person and vessel should be free to take employment wherever it could be found, the United States would certainly not set the example of appropriating to themselves exclusively any portion of the common stock of occupation. . . . But if particular nations grasp at undue shares, and more especially if they seize on the means of the United States to convert them into aliment for their own strength, and withdraw them entirely from the support of those to whom they belong, *defensive* and *protective measures* become necessary on the part of the nation whose marine resources are thus invaded. . . . The materials for maintaining our due share of navigation are ours in abundance, and as to the mode of using them we have only to adopt the principles of those who *thus put us on the defensive*.¹

Henry Clay and Albert Gallatin, commissioners appointed to negotiate the commercial treaty with Great Britain, in 1815, said:

In regard to the discriminating duties we remarked that a proposition to abolish them first came from Great Britain, and a provision to that effect was inserted in the unratified treaty of 1806. Congress had the matter up at their last session, and passed an Act, which we explained. We thought it desirable that they should be abolished, in order to prevent those collisions and that system of commercial warfare in which the two countries would probably be involved by an adherence to them. As an example, we mentioned the great extra duty to which, as we understood, the article of cotton was liable by the British laws when imported in foreign vessels, and which if persisted in would certainly be met by some *countervailing regulations*.²

The report of the House Committee on Commerce in 1822 favored the laying of discriminating duties on vessels from France and the British Colonies, since this action was "necessary to *countervail the restrictive systems* of Great Britain and France."³

President John Quincy Adams in his message of December 2, 1828, said:

This system (of reciprocity treaties) first proclaimed to the world in the first commercial treaty ever concluded in the United States, that of

¹ *American State Papers*, II (1791), 642.

² *Annals of Congress*, 1815-1816, p. 1482.

³ *American State Papers*, II (March 15, 1822), 646.

February 6, 1778, with France, has been invariably the cherished policy of our Union. It is by treaties of commerce alone that it can be made ultimately to prevail as the established system of all civilized nations. With this principle, our fathers extended the hand of friendship to every nation of the globe, and to this policy our country has ever since adhered: *whatever of regulation in our laws has ever been adopted unfavorable to the interest of any foreign nation has been essentially defensive and counteracting to similar regulations of their operation against us.*¹

In quoting these passages before the Senate Committee in 1904, Mr. Chamberlain stated:

It seems to me these show quite conclusively in the minds of those who applied the policy—it was applied strictly as a retaliatory measure—that the object was to prevent other nations from discriminating against us and the very success of discrimination as a retaliatory measure, it appears to me, should have considerable weight with the Commission now.

Senator Lodge: "Your idea, then, is that the early policy was to bring about these very treaties (of reciprocity)?"

Mr. Chamberlain: "Precisely. It resulted in doing that."

Senator Lodge: "To enable us to get into a position of complete equality, and that is all?"

Mr. Chamberlain: "And it resulted, historically, in doing precisely that thing."²

Of course, those who favor discriminating duties bring out counter-quotations from the fathers to show the reverse, but the reader will not be burdened with more of this *argumentum ad hominem*. The quotations given seem clothed with sufficient authority.

Of more damaging weight is the fact that the statistics upon which reliance is placed to show the alleged operation of discriminating duties between 1789 and 1815 are "in the main untrustworthy and very incomplete." As early as 1800, Albert Gallatin observed: "There is good reason to believe that the total difference between the actual tonnage of every description and the tonnage returned in the statement as such was not less than 200,000 tons on the last day of the year 1800; that is to say, instead of 972,000 tons exhibited in this statement the United States did not possess over 770,000 tons,"³ a small error of 21 per cent. In 1822, Register of the Treasury Joseph Nourse says of the year 1818: "The decrease of tonnage in

¹ *Gales and Seaton's Register*, p. 2 of Appendix to Vol. V.

² *Hearings, Mer. Mar. Com., Sen. Rept. 2755*, 58th Cong., 3d Sess., pp. 1762-63.

³ *American State Papers*, I, 464.

this year arises principally from the registered tonnage having been corrected in 1818 by striking off all the vessels the registers of which were granted prior to the year 1815 and which were supposed by the collectors to have been lost at sea, captured, etc."¹ Yet the incorrect figures from 1800 to 1818 have been used by those not informed of this fact as proof of the rapid increase of our registered marine under discriminating duties, while the decrease of 200,000, effected in 1818 to correct the books, has been charged as a result of the reciprocity treaty of 1815! If anyone is interested in the details of the grotesque hoax, let him go to the forbidding report mentioned above (*Hearings, Mer. Mar. Com., Sen. Rept. 2755*, 58th Cong., 3d Sess., pp. 1762-64) or to "Notes on Our Early Shipping Statistics," in the *Proceedings of the Academy of Political Science*, Vol. IX, No. 2, February, 1921, and he will find the ghastly facts. It is plainly evident that no reliance whatever can be placed in the tonnage figures of our shipping prior to 1821.

One who has studied history cannot help realizing the tremendous force of economic and geographic factors as compared with Acts of Congress and Orders in Council. As a matter of fact, the period from 1789 to 1815 was one of almost incessant European wars, except for the brief respite in 1801-2 afforded by the treaty of Amiens. Adam Seybert, in his *Statistical Annals*, 1818,² with reference to these years, said:

A new era was established in our commercial history; the individuals who partook of these advantages were numerous; our catalogue of merchants was swelled beyond what it was entitled to be from the state of our population. . . . The demand in Europe for foreign merchandise, especially for that of the West Indies and South America, secured to all these cargoes a ready sale with great profits. . . . Our tonnage increased in a ratio with the extended catalogue of the exports; we seemed to have arrived at the maximum of human prosperity; in proportion to our population we ranked as the most commercial nation; in point of value our trade was second only to that of Great Britain.

This presents a picture not unlike that of the Scandinavian neutrals during the late war.

On the same subject, Timothy Pitkin, in his *Statistical View of American Commerce*, 1817, remarked:

The war between England and France, which began in 1793, soon after the establishment of the present national Government, and between England

¹ *American State Papers*, II, 648.

² Pp. 59-60.

and Spain in 1796, and which continued, with but short intervals, until it involved all the nations of Europe, *threw into the hands of the American merchant no small portion of the trade of the world.* The local situation of the United States in relation to the West India Islands and their long-accustomed habits of intercourse with them, naturally threw a great proportion of this trade 'nto the hands of the Americans; and the increase in the tonnage of the United States, as well as the spirit and enterprise of their citizens, led them also to engage in the more distant trade of the East Indies and every other part of the world.

It is also true that economic and geographic factors favored the development of shipping in these years. The population of the country was scattered along the seaboard, shut off from the interior by the Appalachian mountain range. The colonies were in the position of a country poor in natural resources and industrial development and such countries must develop shipping.¹ It is a truism that the scanty New England soil early made agriculture less profitable than shipping and trading. The attractiveness of overseas ventures continued, and our shipping increased rather consistently until the great Middle West was opened up. It is reasonable to believe that our shipping would have increased prior to 1818 just as it did between 1818 and 1860 because of the basic economic situation, regardless of discriminating duties.

In the light of these facts, it is clear that discriminating duties played a minor part in the early development of our shipping. Our own merchant marine from 1914 to 1917 and that of the Scandinavian neutrals benefited from the late war exactly as our shipping did during the Napoleonic wars.

The reader will notice in the quotation above that the trade was thrown into the hands of "the American merchant," not the "American shipowner." This statement is correct because in those days a ship was nothing more than a floating storehouse. The owner of the ship was also, in general, the owner of the goods carried by the ship, and the profits of the voyage were derived mainly from the sale of the goods. In other words, shipping as a common carrier, shipping which earned profits from the carriage of the goods apart from the sale of them, did not emerge in this country until the establishment of the Black Ball Line in 1816. It is probable that the separation of the services of the carrier and the merchant came about earlier in

¹ S. G. Riggs, "How Much Shipping Can We Support," *Annalist*, January 23, 1922.

Great Britain than in the United States. Johnson mentions¹ that the Society of Shipowners of Great Britain in 1807 published a volume in which they stated that "The Society of Shipowners think it important that the numerous bodies of men whose capitals are embarked at this time in British shipping are not engaged in other mercantile pursuits, but depend wholly on the returns they expect to receive from their property so employed." In other words, while there may have been some British ships acting as common carriers, there was no American shipping, as we know it today, during the period of discriminating duties, and any arguments by analogy with this period are entirely beside the mark.

Furthermore, the theory that the policy of reciprocity operated especially to the advantage of Great Britain and to the disadvantage of the United States is untenable. American tonnage between 1850 and 1860 was increasing twice as fast as British tonnage. In 1840 the tonnage of vessels entering at and clearing from the United Kingdom with cargo was 7,497,833 tons, of which 70 per cent were British and 11 per cent American. Twenty years later the American percentage was 13 per cent. During these twenty years of reciprocity, British tonnage entering at and clearing from British ports with cargo increased 132 per cent; American 229 per cent.²

In addition, much American tonnage was engaged in indirect trade. In 1840, the American ships entered at or cleared from British ports with cargo from or to the United States, amounted to 596,254 tons, whereas the American tonnage entered at or cleared from Great Britain with cargo, from or to all the world, including the United States, was 829,052 tons. Not only did our shipping in the direct trade of the United States increase greatly after the repeal of discriminations, but many of our vessels competed in the carrying trade of the world. Of the trade carried by our ships in this period for Great Britain, 60 per cent was direct between the two countries and 40 per cent did not enter at or clear from the United States. This is altogether ignored in the argument of the advocates of discriminations, who point to the fact that our ships carried a smaller percentage of our direct trade, but fail to indicate that they carried an increasing amount of the trade between other countries.

¹ E. R. Johnson, *History of Domestic and Foreign Commerce of the United States*, p. 188.

² For these and the following figures, see *Hearings* referred to above, pp. 1769-70.

It appears that the proponents of discriminating duties have no logical historical arguments to stand on. The house of cards built by Bates is blown down by the inrush of facts. Yet I doubt if the agitation for discriminating duties has been killed, for a false economic or historical theory, like an alley cat, has at least nine lives.

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